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No. 96-800

IN THE

Supreme Court of the United States

OCTOBER TERM, 1996

KOTAM ELECTRONICS INC.,

Petitioner,

v.

JBL CONSUMER PRODUCTS, INC.,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

RESPONDENT'S OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether a negotiated agreement to arbitrate a domestic antitrust dispute is enforceable under the Federal Arbitration Act in the absence of evidence that Congress intended to preclude a waiver of judicial remedies for alleged antitrust violations.

PARTIES TO THE PROCEEDINGS

All parties in the courts below and here are listed in the caption. Respondent JBL Consumer Products, Inc. is a division of JBL Incorporated. JBL Incorporated is a subsidiary of Harman Investment Company, Inc., which in turn is a subsidiary of Harman International Industries, Inc. The following is a list of the affiliates of JBL Incorporated:

AKG Acoustics GmbH
AKG Acoustics India Ltd.
AKG Acoustics plc
AKG Akustische u. Kino-Geräte Gesellschaft m.b.H.
Allen & Heath Limited
Amek Systems and Controls Ltd.
Amek Technology Group Plc
Audax Industries SNC
Audax of America, Inc.
Bandive Limited
Becker Automotive (Pty) Ltd.
Becker GmbH
Becker Holding GmbH
Becker of North America, Inc.
Becker Service und Verwaltung GmbH
BSS Audio Ltd.
D.A.V.I.D. GmbH
Edge Technology Group Ltd.
Entel, Ltd.
Environmental Investments, Ltd.
Epicure Products, Inc.
Fosgate, Inc.
Gatehit Limited
Hall Effects Laboratories, Ltd
Harco Indiana, Inc.
Harman Audio Outlet, Inc.
Harman Belgium NV
Harman Consumer Europe A/S
Harman Consumer France SNC
Harman Consumer Manufacturing - El Paso, Inc.

Harman Consumer Nederland, B.V.
Harman Deutschland GmbH
Harman Enterprises, Inc.
Harman France SNC
Harman Holding Europe A/S
Harman Interactive, Inc.
Harman International Foreign Sales Corporation
Harman International Industries Limited
Harman International Japan Co., Limited
Harman International Singapore Pte. Ltd.
Harman-Kardon, Incorporated
Harman Marketing Europe A/S
Harman-Motive, Inc.
Harman Motive Limited
Harman Music Group, Incorporated
Harman Pro France SNC
Harman Pro North America, Inc.
Harman Residential Group, Inc.
Harman UK Limited
Infinity Systems A/S
Infinity Systems, Inc.
JBL Europe A/S
Lexicon, Incorporated
Lydig of Scandinavia A/S
Madrigal Audio Laboratories, Inc.
MBI Broadcast Systems Limited
Orban, Inc.
Precision Devices, Ltd
Revel Corp.
SCJ + AKG Ltd.
Sescord Limited
Son-Audax Loudspeakers Limited
Soundcraft Electronics Limited
Soundcraft Magnetics Limited
Spirit by Soundcraft, Inc.
Studer Deutschland GMBH
Studer Editech Corp.
Studer Canada Limited

Studer Japan Ltd.
Studer Professional Audio AG
Studer U.K. Limited
Studer Wien Ges.Mbh
Studer Digitec, S.A.
Total Audio Concepts Ltd.
TurboSound Ltd.

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RESPONDENT'S OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

The petition for writ of certiorari should be denied because it asks the Court to consider an issue concerning which it has already provided sufficient guidance and as to which no split of authority exists among the circuit courts. Although decided on its own facts in the context of an international dispute, *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614 (1985), and its progeny make clear that, under the Federal Arbitration Act and the federal policy favoring arbitration embodied therein, agreements to arbitrate antitrust claims — including domestic claims — are enforceable. Every circuit court to consider the issue since *Mitsubishi* has reached that conclusion based on this Court's existing authority.

STATEMENT

From approximately 1984 to 1992, petitioner Kotam Electronics, Inc. ("Kotam"), a dealer and distributor of consumer electronic products, entered into annual dealer and distributor contracts with Respondent JBL Consumer Products, Inc. ("JBL"). Each contract contained an identical arbitration clause explicitly

requiring the parties to submit claims arising out of their contractual relationship, including claims asserting violations of the antitrust laws, to binding arbitration:

> 22. GOVERNING LAW AND ARBITRATION
>
> b. Any controversy or claim arising out of or relating to this Agreement, or the breach or validity thereof, whether at common law or under statute, *including without limitation claims asserting violation of the antitrust laws*, shall be settled by final and binding arbitration in accordance with the Rules for Commercial Arbitration of the American Arbitration Association ("AAA") in effect at the time of the execution of this Agreement.

Pet. 6 (emphasis added in petition). Despite its contractual promise to arbitrate such disputes, Kotam filed a one-count complaint against JBL on April 21, 1994, in the United States District Court for the Southern District of Florida, alleging price discrimination in violation of the Robinson-Patman Act, 15 U.S.C. § 13(a).[1]

On May 23, 1994, JBL moved to dismiss the complaint or, in the alternative, to stay judicial proceedings pending arbitration pursuant to Section 3 of the Federal Arbitration Act, 9 U.S.C. § 3. The District Court denied JBL's motion to dismiss on September 8, 1994, believing it was bound to apply the former Fifth Circuit's broad holding in *Cobb v. Lewis*, 488 F.2d 41, 47 (5th Cir. 1974), *overruled by Kotam Elec., Inc. v. JBL Prods., Inc.*, 93 F.3d 724 (11th Cir. 1996), that ". . . as a general matter, antitrust claims are not appropriate subjects of arbitration" despite intervening Supreme Court authority rejecting each of the premises for *Cobb*'s non-arbitration rule. A divided panel of the Eleventh Circuit affirmed the District Court's decision. On November 8, 1995, however, the Eleventh Circuit granted JBL's

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[1] There has never been any dispute that Kotam's single claim for price discrimination falls squarely within the terms of the parties' agreement to arbitrate "claims asserting violation of the antitrust laws."

request for a rehearing *en banc*, thereby vacating the panel's decision. 69 F.3d 1097.

On August 19, 1996, the Eleventh Circuit sitting *en banc* held that Supreme Court precedent developed since *Cobb* and beginning with *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, compels the conclusion that ". . . arbitration agreements concerning domestic antitrust claims are enforceable." *Kotam Elec. Inc. v. JBL Consumer Products, Inc.*, 93 F.3d 724, 728 (11th Cir. 1996) (*en banc*) (reprinted at Pet. App. 1-11). As the full court recognized, the *Cobb* panel had expressly followed the reasoning of the Second Circuit in *American Safety Equip. Corp. v. J.P. Maguire & Co.*, 391 F.2d 821, 827-28 (2d. Cir. 1968), to support its view that, as a matter of public policy, antitrust claims should not be submitted to arbitration (the "*American Safety* doctrine"). As the Eleventh Circuit observed, in *Mitsubishi* this Court rejected each element of the *American Safety* doctrine upon which *Cobb* was based, thereby undercutting the argument that the rule against arbitration of domestic antitrust claims remains viable. Pet. App. 5-8.

First, in *Mitsubishi* the Supreme Court rejected the contention that antitrust claims must be resolved in the courts to preserve the role of private litigants in aiding the enforcement of the antitrust laws. 473 U.S. at 635-37. Second, this Court concluded that "[t]he mere appearance of an antitrust dispute does not alone warrant invalidation of the selected forum on the undemonstrated assumption that the arbitration clause is tainted." *Id.* at 632. Third, this Court rejected the notion that the issues and evidence in antitrust cases are better suited to judicial procedures. *Id.* at 633. Finally, this Court ". . . decline[d] to indulge the presumption that the parties and arbitral body conducting a proceeding will be unable or unwilling to retain competent, conscientious, and impartial arbitrators." *Id.* at 634.

Acknowledging that *Mitsubishi* involved the enforcement of an agreement to arbitrate an antitrust dispute in the international context, the Eleventh Circuit nevertheless concluded that its rationale compels enforcement of agreements to arbitrate domestic

antitrust claims as well. Pet. App. 8-9. Since the Supreme Court rejected each of the premises of the judicially-created rule against arbitration of antitrust claims, the Eleventh Circuit held, no basis remains for refusing to enforce bargains to arbitrate domestic antitrust claims. Pet. App. 7-10. In light of the "federal policy favoring arbitration" embodied in the Federal Arbitration Act, a party, having agreed to arbitrate, should be held to that bargain unless Congress itself has ". . . evinced an intention to preclude a waiver of judicial remedies for the statutory rights at issue." Pet. App. 8 (quoting *Mitsubishi*, 473 U.S. at 628, 105 S.Ct. at 3354-55). The Supreme Court in *Mitsubishi* could find no such evidence in the legislative history of either the Sherman Act or the Federal Arbitration Act. Pet. App. 7-8. (citing *Mitsubishi*, 473 U.S. at 628-29). Thus, the Eleventh Circuit held, *Mitsubishi* applies equally in the domestic arena.

The Eleventh Circuit also relied on the fact that the Supreme Court itself has repeatedly abandoned the *American Safety* doctrine in the domestic context. Pet. App. 8-10. Indeed, in *Shearson/American Express, Inc. v. McMahon*, 482 U.S. 220 (1987), the Court rejected a Second Circuit opinion that its *American Safety* doctrine was still good law despite *Mitsubishi*, and in part on that basis discarded the distinction between domestic and international transactions with respect to arbitration of claims under § 10(b) of the Securities Exchange Act of 1934 and RICO. *See also id.*, 482 U.S. at 232 (declining to limit *Scherk v. Alberto-Culver Co.*, 417 U.S. 506 (1974), involving the arbitrability of § 10(b) claims, to cases involving international transactions). This Court has also cited *Mitsubishi* for the general proposition that antitrust claims are arbitrable, making no distinction between those that arise from international transactions and those that arise in the domestic context. *Gilmer v. Interstate/ Johnson Lane Corp.*, 500 U.S. 20, 26 (1991).

Finally, the Eleventh Circuit relied on the fact that, as discussed more fully below, four other circuits have decided or expressed the view that, in light of *Mitsubishi* and its progeny, domestic antitrust claims are arbitrable. Pet. App. 10-11 (citing *Sanjuan v. American Bd. of Psychiatry and Neurology, Inc.*, 40

F.3d 247, 250 (7th Cir. 1994), *cert. denied*, 116 S.Ct. 1044 (1996); *Nghiem v. NEC Elec., Inc.*, 25 F.3d 1437, 1441-42 (9th Cir.), *cert. denied*, 115 S.Ct. 638 (1994); *Hough v. Merrill Lynch*, 946 F.2d 883 (2d Cir. 1991) (affirming without op., 757 F.Supp. 283, 286 (S.D.N.Y. 1991)); *Smoky Greenhaw Cotton Co., Inc. v. Merrill Lynch, Pierce, Fenner and Smith, Inc.*, 785 F.2d 1274, 1282 (5th Cir. 1986) (*per curiam*), *cert. denied*, 482 U.S. 928 (1987)).

REASONS FOR DENYING THE WRIT

The Court need not revisit the arbitrability of domestic antitrust claims. As the Eleventh Circuit held below, existing Supreme Court authority already provides sufficient guidance to conclude that agreements to arbitrate domestic antitrust claims are enforceable under the Federal Arbitration Act. Indeed, since *Mitsubishi* was decided, every circuit to consider the issue has reached this conclusion.

Beginning even before *Mitsubishi*, the Supreme Court has consistently recognized a "'liberal federal policy favoring arbitration agreements.'" *Mitsubishi*, 473 U.S. at 625 (quoting *Moses H. Cone Memorial Hospital v. Mercury Construction Corp.*, 460 U.S. 1, 24 (1983). This policy is embodied in the Federal Arbitration Act, which was "designed to overcome an anachronistic judicial hostility to agreements to arbitrate." *Id.* at 625 n.14 (citing *Dean Witter Reynolds Inc. v Byrd*, 470 U.S. 213, 219-221 and n.6 (1985); *Scherk v. Alberto-Culver Co.*, 417 U.S. at 510 & n.4). Congress' "'preeminent concern [in passing the Act] was to enforce private agreements into which parties had entered,' a concern which 'requires that [courts] rigorously enforce agreements to arbitrate.'" *Mitsubishi*, 473 U.S. at 625-26 (quoting *Dean Witter Reynolds Inc. v. Byrd*, 470 U.S. at 221). In view of that concern, ". . . any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration." *Id.* at 626 (quoting *Moses H. Cone*, 460 U.S. at 24-25).

Notwithstanding Kotam's arguments to the contrary, *Mitsubishi* and its progeny make clear that the federal policy favoring

enforcement of arbitration agreements applies to domestic (as well as international) antitrust claims. The core holding in *Mitsubishi* (though the case arose in an international context) is that, because Congress has evinced no intention to the contrary, the Federal Arbitration Act authorizes enforcement of agreements to arbitrate claims under the antitrust statutes, 473 U.S. at 628, 632-37, a holding that applies equally to domestic disputes.

As explained in *Mitsubishi*, the "centerpiece provision" of the Arbitration Act "makes a written agreement to arbitrate 'in any . . . contract evidencing a transaction involving commerce . . . valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.'" 473 U.S. at 625 (quoting 9 U.S.C. § 2). In view of this Congressional mandate, the Supreme Court has already held that federal statutory claims are *presumptively* arbitrable ". . . unless Congress itself has evinced an intention to preclude a waiver of judicial remedies for the statutory rights at issue." *Id.* at 628.[2]

Thus, the party resisting enforcement of an arbitration agreement bears the burden of demonstrating that Congress intended to exempt the particular statutory rights at issue from arbitration. *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. at 26 (citing *Shearson/American Express Inc. v. McMahon*, 482 U.S. at 227; *Rodriguez de Quijas v. Shearson/American Express, Inc.*, 490 U.S. 477 (1989). This intent may only be gleaned from the text of the statute at issue, from its legislative history, or from an "inherent conflict" between the purposes of the statute and arbitration. *Gilmer*, 500 U.S. at 26 (citing *McMahon*, 482 U.S. at 227; *Mitsubishi*, 473 U.S. at 628).

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[2] *See also Mitsubishi*, 473 U.S. at 627 ("Just as it is the congressional policy manifested in the Federal Arbitration Act that requires courts liberally to construe the scope of arbitration agreements covered by that Act, it is the congressional intention expressed in some other statute on which the courts must rely to identify any category of claims as to which agreements to arbitrate will be held unenforceable.").

In *Mitsubishi* the Court examined both the Sherman and Federal Arbitration Acts and their legislative histories, but found no evidence that Congress intended to preclude arbitration of antitrust claims, domestic or otherwise. 473 U.S. at 628-29, 635-36. The Court found, moreover, no "inherent conflict" between the antitrust laws and arbitration. Instead, it identified and considered each of the relevant policy considerations (effectively addressing each of the concerns raised by Kotam at pages 18-19 of the Petition), but concluded that these considerations provide no basis for exempting claims under the antitrust statutes. *Id.* at 632-37. This analysis leaves no room for debate about the "wisdom" of enforcing agreements to arbitrate claims under the antitrust laws. *See Nghiem v. NEC Elec., Inc.*, 25 F.3d at 1441-42; *accord* Pet. App. 6-8.

Petitioner Kotam, nevertheless, argues that the Court should grant its petition to reconsider whether domestic antitrust claims ought to be submitted to arbitration, simply reiterating policy concerns already rejected in *Mitsubishi*. Principally, it argues that the Court should consider whether enforcing agreements to arbitrate antitrust disputes would undermine the role of private litigants in enforcing the antitrust statutes. Pet. 18-19. The Court, however, has already rejected that argument, concluding:

> [S]o long as the prospective litigant effectively may vindicate its statutory cause of action in the arbitral forum, the statute will continue to serve both its remedial and deterrent function.

Mitsubishi, 473 U.S. at 637.[3] The Court reasoned that, despite

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[3] *See also Gilmer*, 500 U.S. at 27-28 (citation omitted):

> It is true that arbitration focuses on specific disputes between the parties involved. The same can be said, however, of judicial resolution of claims. Both of these dispute resolution mechanisms nevertheless also can further broader social purposes. The Sherman Act, the Securities Exchange Act of 1934, RICO, and the Securities Act of 1933 all are designed to advance important public policies, but, as noted above, claims under these statutes are appropriate for

the "important incidental policing function" of the treble-damages cause of action, Congress' primary purpose was to provide a remedy, in a proper case, to an injured competitor.[4] *Id.* at 635-37. *See also McMahon*, 482 U.S. at 240. It went on to find, moreover, no basis for assuming that arbitration will be an inadequate mechanism for enforcement of the antitrust laws, since arbitrators are bound, as are judges, to apply the antitrust laws. *Mitsubishi*, 473 U.S. at 636-37. Notwithstanding Kotam's arguments to the contrary, the Supreme Court has already found no conflict between the use of arbitration and the broader social purposes of the antitrust statutes.

Petitioner Kotam also argues that the Court should consider whether arbitration procedures are ill-suited for the resolution of antitrust claims, speculating that parties to antitrust arbitration will have inadequate discovery and will be prejudiced if arbitrators do not produce written opinions. Pet. 19. In *Mitsubishi*, however, the Court rejected the premise that aspects of the arbitral process including "'. . . expedition, minimal requirements of written rationale, simplicity, [and] resort to basic concepts of common sense and simple equity'" are ill-adapted to potentially complex antitrust cases. *Mitsubishi*, 473 U.S. at 632, 634-35 (quoting *American Safety*, 391 F.2d at 826). As the Court observed, ". . . it is often a judgment that streamlined proceedings and expeditious results will best serve their needs that causes parties to agree to arbitrate their disputes." *Id.* at 633.

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arbitration.

[4] The same rationale applies whether a party is seeking injunctive relief, damages, or both. *See* Pet. at 18-19. This is not, in any event, a case in which the arbitrator may be asked to impose injunctive relief since Kotam is no longer a distributor or dealer of JBL products and cannot be affected in any way by JBL's future pricing practices. *See, e.g. Todorov v. DCH Healthcare Auth.*, 921 F.2d 1438, 1452 (11th Cir. 1991) ("[A] plaintiff, in order to have standing under section 16 [to pursue injunctive relief], must allege threatened injury that would constitute antitrust injury if inflicted upon the plaintiff.").

Kotam further asserts a need for the Court to consider whether antitrust issues should be kept from commercial arbitrators because of the relatively limited opportunity for review of "erroneous award[s]." Pet. 18. The Court in *Mitsubishi*, however, ". . . decline[d] to indulge the presumption that the parties and arbitral body conducting a proceeding will be unable or unwilling to retain competent, conscientious, and impartial arbitrators." 473 U.S. at 634. As the Court later observed in *McMahon*, it expressed this confidence in arbitral tribunals even assuming the absence of judicial oversight:

> In *Mitsubishi*, for example, we recognized that arbitral tribunals are readily capable of handling the factual and legal complexities of antitrust claims, notwithstanding the absence of judicial instruction and supervision. See 473 U.S., at 633-34.

McMahon, 482 U.S. at 232.

Kotam finally argues that Supreme Court review is necessary to determine whether arbitration of antitrust claims should be precluded because of the speculative danger that manufacturers may impose "unfair" arbitration provisions on what Kotam casually assumes to be relatively weak distributors. Pet. 19. In so doing, Kotam attempts to resuscitate yet another concern that *Mitsubishi* addressed: "The mere appearance of an antitrust dispute does not alone warrant invalidation of the selected forum on the undemonstrated assumption that the arbitration award is tainted." *Mitsubishi*, 473 U.S. at 632. Under *Mitsubishi*, in a proper case, a party may avoid an "unfair" arbitration provision by presenting a ". . . well-supported claim[ ] that the agreement to arbitrate resulted from the sort of fraud or overwhelming economic power that would provide grounds 'for the revocation of any contract.'" Id. at 627.

Petitioner Kotam is simply incorrect when it claims that "[t]here is real conflict and confusion among various circuits regarding the scope and effect of *Mitsubishi*." Pet. 20. The cases Kotam cites as conflicting with the Eleventh Circuit's *en banc* opinion say nothing about the scope and effect of *Mitsubishi* because each pre-dates the *Mitsubishi* decision. Indeed, as the

court below recognized, every Circuit that has addressed the issue since *Mitsubishi* has concluded that the rule against arbitration of domestic antitrust disputes is incompatible with *Mitsubishi* and its progeny and that domestic antitrust claims are therefore arbitrable.

In *Nghiem v. NEC Electronic, Inc.*, the Ninth Circuit overruled its own otherwise controlling authority to the contrary and held that under *Mitsubishi* and its progeny, domestic antitrust claims may be submitted to arbitration. Like the Eleventh Circuit in this case, it was ". . . persuaded that *Mitsubishi* is not restricted to the international context":

> Given the Court's meticulous step-by-step disembowelment of the *American Safety* doctrine, this circuit will no longer follow *American Safety*. We hold that *Mitsubishi* effectively overruled *American Safety* and its progeny.

Nghiem, 25 F.3d 1441-42. It also relied, as did the Eleventh Circuit, on the fact that the Supreme Court has cited *Mitsubishi* for the general proposition that antitrust claims can be submitted to arbitration. *Id.* at 1441 (citing *Gilmer*, 500 U.S. at 26-27). Finally, it, like the Eleventh Circuit, relied on the "'the reasoning used by the [Supreme] Court in *McMahon* to support its holding regarding the arbitrability of 1934 Act and RICO claims'":

> "The *McMahon* Court made no distinction between the international and domestic arbitral forums, but rather stated that domestic and international arbitrators are equally able to handle complex statutory schemes involving treble damage remedies. Such reasoning, in combination with the FAA *can only mean* the judicially implied *antitrust exemption to the FAA no longer exists*."

Id. (quoting G. Richard Shell, *Res Judicata and Collateral Estoppel Effects of Commercial Arbitration*, 35 UCLA L. Rev. 623, 624 n.7 (1988)).[5]

The Second Circuit itself has disavowed its prior decision in *American Safety*, affirming a district court's holding that ". . . the reasoning of *Mitsubishi* should apply with equal force to domestic claims" and that "'. . . none of the justifications for the *American Safety* doctrine retain their vigor.'" *Hough v. Merrill Lynch*, 757 F.Supp. 283, 286 (S.D.N.Y.), *aff'd without op.*, 946 F.2d 883 (2d Cir. 1991) (citations omitted). More recently, it cited *Mitsubishi* for the proposition that "[t]he policy in favor of arbitration extends . . . to . . . arbitrations of claims based on federal statutory rights [including antitrust claims]," drawing no distinction between international and domestic disputes. *National Union Fire Ins. Co. v. Belco Petroleum Corp.*, 88 F.3d 129, 133 (2d Cir. 1996). *See also United States Fire Ins. Co. v. National Gypsum Co.*, No. 95-7806 1996 U.S. App. LEXIS 29159 at * 7 (2d Cir. Nov. 4, 1996) (citing *Mitsubishi* for the general proposition that "antitrust claims are arbitrable").

Likewise, the Seventh Circuit stated in dicta that companies ". . . may agree to arbitrate their antitrust disputes — certainly so for international transactions, . . . and likely so for domestic transactions." *Sanjuan v. American Bd. of Psychiatry and Neurology, Inc.*, 40 F.3d at 250. The Fifth Circuit stated in a non-antitrust case that ". . . although *Mitsubishi* arose in an international antitrust dispute and its holding purports to be limited to that context, we believe that its broad language may

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[5] In light of this analysis and the careful opinion of the Eleventh Circuit below, there is no merit to Kotam's assertion that the Ninth and Eleventh Circuits simply "jumped to the conclusion that the policies underlying domestic and international antitrust disputes are indistinguishable." Pet. 20. Both the Eleventh and Ninth Circuits examined existing Supreme Court authority and concluded that this Court has already rejected each of the policy arguments against permitting arbitration of domestic antitrust disputes.

carry significance for domestic disputes as well." *Smoky Greenhaw Cotton Co., Inc. v. Merrill Lynch, Pierce, Fenner and Smith, Inc.*, 785 F.2d at 1282. In short, no confusion, let alone conflict, exists among the circuits concerning the implications of *Mitsubishi* and its progeny.

CONCLUSION

For the reasons stated above, the petition for writ of certiorari should be denied.

Respectfully submitted,

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